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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Seventeenth periodic reports of States parties due in 2002

Addendum

HUNGARY*

[28 January 2002]

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* This document contains the fourteenth, fifteenth, sixteenth and seventeenth periodic reports of Hungary, due on 4 January 1996, 1998, 2000 and 2002 respectively, submitted in one document. For the eleventh, twelfth and thirteenth periodic reports of Hungary, submitted in one document, and the summary records of the meetings at which the Committee considered that report, see documents CERD/C/263/Add.6 and CERD/C/SR.1143-1144.

The annexes to the report submitted by the Government of Hungary may be consulted in the files of the secretariat.

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I. GENERAL REMARKS

1. Reference is made to the previous report (CERD/C/263/Add.6) regarding the Constitution (paras. 1-5).

2. Reference is also made to the status of minorities (paras. 6-12) elaborated in the previous report.

3. International treaties to which Hungary is a party do not automatically constitute part of domestic law. International treaties need to be transformed into domestic law either by promulgation or by being published in the Official Gazette. In this regard, the Hungarian system can be considered dualistic.

4. The International Convention on the Elimination of All Forms of Racial Discrimination has been promulgated by a decree (Law Decree No. 8 of 1966). By the act of promulgation, the Convention became part of domestic law.

5. By becoming party to international conventions, Hungary complies with the requirements of the rule of law, which has led to the adaptation into the legal system of the generally accepted principles and provisions relating to international penal law, to criminal procedural law and to the enforcement of punishment. The process of legal harmonization with international obligations has resulted in comprehensive changes affecting the legal system as a whole.

6. The process of legal harmonization covers the complete legal system, including Hungary's internal legal regulations, which protect human rights and fundamental freedoms, as well as each and every component of the legal provisions ranging from the Constitution to implementing decrees.

7. Wide-ranging legal provisions have been adopted and put into practice by the Republic of Hungary to regulate the activities of the legislative, executive, judicial, prosecutorial and other institutions (such as the ombudsman) responsible for eliminating discrimination prohibited by the Convention. It is now generally accepted that in the legal system as a whole, including the penitentiary system, the respect for, and the observance of human rights must be guaranteed and safeguarded.

8. The Constitution of the Republic of Hungary declares that national and ethnic minorities shall share in the power of the people: they shall be constituent factors of the State. The Republic of Hungary shall protect national and ethnic minorities, it shall ensure their collective participation in public life, foster their culture, the use of their mother tongue, school instruction conducted in their language, and the right to use their name in their own language.

9. The laws of the Republic of Hungary guarantee the right for the national and ethnic minorities within the territory of the country to establish organs of self-government at local and national levels.

10. The Republic of Hungary guarantees human rights and fundamental freedoms for everyone living in the territory of the country without discrimination of any kind as to race, colour, gender, language, religion, political or other opinion, national or social origin, wealth, birth, or any other status. Any discrimination on these grounds is persecuted to the full extent of the law.

II. ARTICLE 2 OF THE CONVENTION

11. The basic anti-discrimination measures and provisions of the Hungarian legal system are to be found in the Constitution itself, while the details and safeguards are elaborated in statutes fully in line with the Constitution, some of them in the comprehensive codes of the various legal branches. The National Assembly of the Republic of Hungary has not chosen to adopt a comprehensive anti-discrimination law; however, according to decision No. 45/2000 (XII.8) of the Constitutional Court of Hungary (AB) this does not constitute an unconstitutional omission in terms of the requirement to legislate. The Constitutional Court decided that "it is not in itself contrary to the requirement of legal security if several laws contain provisions pertaining to a certain issue, and these are not regulated in a single, comprehensive law"; the separate provisions of anti-discrimination laws do not in themselves establish unconstitutionality. The former Parliamentary Commissioner for National and Ethnic Minority Rights has suggested in his report of activities undertaken in 2000 a draft law on the "Measures against racism and xenophobia and the safeguarding of equal treatment". The report, however, does not consider this draft to be a formal legislative motion under section 25 of Act No. LXXVII of 1993 on the Parliamentary Commissioner for Civil Rights. According to the report, the proposal is merely the result of academic research and might be one of the possible forms of implementing EU Directive No. 2000/43/EC in the Hungarian legal system.

12. The majority of motions lodged with the Constitutional Court requesting ex post facto review of the constitutionality of statutes allege violation of the prohibition of discrimination. The Constitutional Court decides on a case-by-case basis whether the discrimination in question is unconstitutional or not. According to the Constitutional Court, the prohibition of discrimination applies not only to human and civil rights, but the prohibition also encompasses the entire legal system if the discrimination is contrary to the right to human dignity. In several of its decisions the Constitutional Court qualified the discrimination under consideration as affirmative action. Among these decisions, AB Decision No. 22/1997 (IV.25) requires special attention. The decision stated, in connection with the financing of schools of national minorities, that where these schools take on responsibilities of State schools, affirmative action in favour of schools that receive less financial support from the State is acceptable from the constitutional point of view. The schools of national minorities share this position with denominational schools.

13. With Act XXXIV of 1999, Hungary has promulgated the Framework Convention for the Protection of National Minorities, adopted by the Council of Europe in Strasbourg on 1 February 1995. Article 4 of the Framework Convention stipulates that any discrimination based on belonging to a national minority shall be prohibited. The parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social,

political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they take due account of the specific conditions of the persons belonging to national minorities. The measures adopted shall not be considered to be an act of discrimination.

14. With Act XL of 1999, Hungary has promulgated the European Charter for Regional or Minority Languages, adopted in Strasbourg on 5 November 1992. According to article 7 (2) of the Charter the parties undertake to eliminate, if they have not yet done so, any unjustified distinction, exclusion, restriction or preference relating to the use of a regional or minority language and intended to discourage or endanger the maintenance or development of it. The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely used languages. However, the Charter requires the compliance of Hungary only with regard to six languages, while domestic law (Act LXXVII of 1993 on the Rights of National and Ethnic Minorities) accepts the equality of all 13 national and ethnic languages.

15. The documents used by the Hungarian authorities during an investigation in a court trial or in a penitentiary institution cannot indicate the national or ethnic origin or the racial or religious affiliation of the defendant or convict. Such registration is prohibited by law and even questions containing any reference to them are prohibited. At the request of the Ombudsman, 47 cases were investigated by the prosecutor in 1997 and in no single case could the investigation find any element of discrimination, a conclusion that the Ombudsman also accepted. There were altogether three persons who claimed to have suffered legal prejudice because of their ethnic origin. In two of the three cases the supervising prosecutors found abuses of public office, and in one case the defendant was held in preliminary custody for as long as nine months because he was charged with 32 counts of robbery and larceny, an indictment which required a lengthy investigation, i.e. his prolonged detention was not attributable to his ethnic origin.

Sentencing practice between 1995 and 2001

16. Within the powers defined by the Constitution and in compliance with the laws governing its competence, the Supreme Court of Hungary endeavours to ensure the unity of judicature and monitors the functioning of the courts.

17. In the course of its work the Supreme Court has not encountered decisions, measures or procedural acts violating substantive or procedural rules and regulations that might give rise to a supposition that the sentencing practice of the criminal courts violates the provisions of the Convention.

18. As to the courts' dealing with the merits of the cases: no notice has been received by any of the competent authorities of a violation of the provisions of the Convention. Consequently it can safely be stated that the sentencing practice of the Hungarian courts, in the light of articles 2 and 7 of the Convention, need not be changed.

19. One of the most pressing outstanding problems in Hungary is how to find appropriate accommodation for foreign nationals who violate the law. The shortcomings that characterize refugee shelters (overcrowding and lack of educational, hygienic and sport facilities) exist also in police detention facilities and penitentiary institutions, however to a lesser extent. By European standards, Hungarian penitentiary institutions are becoming increasingly crowded: they have a prison population that exceeds standard capacity by 60 per cent. About half of the prisons are even more overcrowded, and in one or two penitentiary institutions the number of inmates is twice as high as the present average of 160 per cent. Detention cells in police stations are not yet that crowded, although there is also a shortage of capacity because a few dozen police detention cells have been closed down as they were found by the Parliamentary Commissioner for Civil Rights to be unsuitable for detaining human beings.

20. Owing to increasing migratory trends, community shelters managed by the border guards have become so crowded that in many cases they have become unacceptable. Overcrowded facilities have made it very difficult for the authorities to comply with regulations that require the separation of foreign nationals from Hungarians. It is also difficult for migrants to deposit or wash their personal belongings. There have been frequent complaints about the lack of appropriate separation - i.e. lack of privacy - as well as untidy sanitary conditions.

21. When on his visits of inspection the supervising prosecutor finds shortcomings that contradict the principle of humane treatment, he issues an appeal to the director of the community shelter to eliminate the problems or take steps to close down the community shelter; this is the most he is able to do, given his limited powers of action. Until 2001 prosecutor's offices have not been granted legal supervisory powers over community shelters; however, the recently adopted amendment to Act V of 1972 (Act XXXI of 2001) may create such powers in the future.

22. It must be emphasized that the authorities have not found any single case in which persons housed in community shelters have been discriminated against or treated in a manner prohibited by law.

23. Recently, Hungary has witnessed a lull in migration waves. Border checkpoints and the border registration system have been modernized and most of the community centres have been refurbished; the conditions for housing foreign nationals have therefore considerably improved.

24. Hungary's improving legal regulations and their practical implementation are on the whole compatible with international standards and satisfy the criteria of the rule of law.

III. ARTICLE 3 OF THE CONVENTION

25. In 1996 several provisions of the Criminal Code were amended by the National Assembly in order to implement the prohibition of racial discrimination and to create the necessary legal environment for more effective measures against those who violate the prohibition.

26. Act XVII of 1996 introduced new legal facts of crime into the Criminal Code and also amended some of its sections. Penal consequences are codified in section 155 of the Criminal Code for genocide and in section 157 for apartheid, whereas section 174/B sanctions violence against a member of a national, ethnic, racial or religious group.

27. Between 1995 and 2000 the following amendments were enacted in the Hungarian Criminal Code (henceforth: Btk.) with a view to harmonizing it with the Convention.

28. Act XVII of 1996, which entered into force on 15 June 1996, amended the legal provisions regulating genocide (sect. 155), apartheid (sect. 157) and incitement against a community (sect. 269). It annulled the provision on crime committed against a national, ethnic or religious group (sect. 156) and enacted the provision regulating violence used against members of a national, ethnic or religious group (sect. 174/B).

29. As regards section 155 of Btk., through the incorporation of subparagraph (b) ("causes serious bodily or mental injury to the members of the group on account of their belonging to the group") the legislature extended the scope of conduct regulated under this provision. Concerning subparagraph (a), killing only one member of a group shall no longer constitute genocide, and the term "folk" group was replaced by "ethnic" group.

30. Section 155 of Btk., in force since 15 June 1996, stipulates the following:

"Section 155

"(1) Anyone who - with the aim of total or partial extermination of a national, ethnic, racial or religious group -

"(a) kills members of the group,

"(b) causes serious bodily or mental harm to members of the group on account of their belonging to the group,

"(c) inflicts on the group conditions of life which threaten the physical destruction of the group or certain members thereof,

"(d) imposes a measure aimed at preventing births within the group,

"(e) transfers children that belong to the group to another group

"commits a crime and shall be punished with imprisonment lasting from 10 to 15 years or life imprisonment.

"(2) Anyone who attempts to commit genocide shall be punished with imprisonment for two to eight years."

31. Former section 156 of Btk. on crimes against a national, ethnic, racial or religious group was annulled and at present the offence is regulated under section 174/B.

32. The name of the offence governed by section 157 was changed from "racial discrimination" to "apartheid" and the provision was significantly enlarged: it ceased to be subsidiary in nature and in place of the former phrasing ("act prohibited under international law"), the new provision specifies the conduct constituting the offence, provides full regulation and determines the specific limits, and also provides for a significantly longer term of imprisonment than formerly allowed for "racial discrimination" - from one to five years' imprisonment.

33. Section 157 of Btk., in force since 15 June 1996, provides as follows:

"(1) Anyone who - with the aim of obtaining and maintaining domination by one racial group of people over another racial group of people and/or with the aim of the regular oppression of the other racial group -

"(a) kills members of a racial group or groups,

"(b) inflicts on a racial group or groups conditions of life which threaten the total or partial physical annihilation of the group

"commits a crime and shall be punished with imprisonment lasting from 10 to 15 years or life imprisonment.

"(2) The person who commits a crime of apartheid shall be punished with imprisonment lasting from 5 to 10 years.

"(3) Punishment shall be imprisonment from 10 to 15 years or life imprisonment if the criminal act of apartheid described in subsection (2) has resulted in serious consequences.

"(4) For the purposes of subparagraphs (2) and (3), a crime of apartheid shall mean the crime of apartheid defined in paragraphs (a)/(ii), (a)/(iii), (c), (d), (e) and (f) of article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid, adopted on 30 November 1973 by the General Assembly of the United Nations in New York, promulgated by Law Decree No. 27 of 1976."

IV. ARTICLE 4 OF THE CONVENTION

34. As a result of legislative changes, "violence against a member of a national, ethnic, racial or religious group" became a new offence under section 174/B, which provides:

"(1) Anyone who ill-treats someone because he/she belongs or is believed to belong to a national, ethnic, racial or religious group, or coerces him/her with violence or threat to do or not to do or endure something, commits a felony and shall be punished with imprisonment of up to five years.

"(2) The punishment shall be imprisonment from two to eight years if the criminal act is committed

"(a) by force of arms [i.e. with firearms or explosives];

"(b) in an armed manner [i.e. with any other weapon];

"(c) causing considerable injury of interest [i.e. personal prejudice, excluding physical injury];

"(d) with the torture of the injured party;

"(e) in a group [of at least three];

"(f) in a criminal conspiracy [i.e. two or more persons acting in an organized manner]."

35. Amended section 269 of Btk. contained the phrase "commits an act leading to the incitement of hatred", but by decision No. 12/1999 (V.21) AB the Hungarian Constitutional Court annulled this part of the text of the amended provision, finding that such threatening with the sanctions of criminal law amounted to disproportionate and unnecessary restriction of the right to freedom of opinion.

V. ARTICLE 5 OF THE CONVENTION

36. Act CX of 1999 amending Act III of 1952 on the Code of Civil Procedure (henceforth: Pp.) re-enacted the fundamental principles of civil procedure. The right to the use of the mother tongue is of particular importance among the principles.

37. Section 6 of Pp. reinforces the formerly declared principle that no one shall be at a disadvantage because of his/her lack of knowledge of Hungarian. It sets forth as a new element that in proceedings before courts and legal authorities, to the extent specified under international agreements, everyone shall have the right freely to use his/her mother tongue, or regional or minority language. To give effect to this principle, courts shall supply interpreters.

38. Newly enacted subsection (4) of section 8 of Pp. provides that the costs of the interpreter shall be advanced and borne by the State. These amendments aim to harmonize Hungarian laws with the European Charter of Regional and Minority Languages promulgated in Hungary by Act No. 40 of 1999.

39. Among the most important legislative changes is the amendment of the Law on Minor Offences, which was redrafted in 1999. The new act retains the section "Discrimination against an employee" and perpetrators of the offence are now liable to a penalty of Ft 100,000. The offence was introduced into the Law on Minor Offences by Government Decree No. 38/1997 (III.5). Section 93 of Act No. LXIX of 1999 on the Law on Minor Offences now deals with discrimination against an employee and states that the employer who "unlawfully denies employment to a person in connection with his/her sex, age, nationality, race, descent,

religion, political conviction, membership in a trade union or his/her activities in this connection, or because of any other circumstances not in connection with the employment", shall be liable to a fine of up to Ft 100,000. According to the Act, the procedure under this section falls within the competence of the Office of Labour Safety and the Labour Inspector.

40. The legislators also decided that those who violate section 263 of the Criminal Code on misuse of firearms or ammunition, section 263/B on arms smuggling or section 264/C on misuse of weapons prohibited by international conventions - and in so doing target a national, ethnic, racial or religious group or a member of such a group - commit an aggravated crime punishable on the same terms as a repeated offence.

41. Act XVI of 2001 on the amendment of the Labour Code and other related acts for purposes of harmonization was adopted by the National Assembly on 17 April 2001 and entered into force on 1 July 2001. The amendment reworded the regulations in section 5 concerning the prohibition of discrimination and the obligation of priority. According to the amended Act, in connection with employment, employees shall not be discriminated against on grounds of sex, age, marital or family status, handicap, nationality, race, ethnic origin, religion, political affiliation or membership in workers' representative organizations or activities connected therewith, or on the basis of any other circumstances not related to employment.

42. The new element of the definition is the prohibition of discrimination amongst employees on the grounds of family status and handicap. The amendment of the Labour Code, a unique attempt in the Hungarian legal system so far, aims to define indirect discrimination. For the purpose of the Act indirect discrimination shall exist where - on the basis of characteristics defined in subsection (1) - an employment-related provision, criterion, condition or practice that is apparently neutral or that affords the same rights to all disadvantages a substantially higher proportion of the members of a particular group of employees, unless that provision, criterion, condition or practice is appropriate and necessary and can be justified by objective factors. As an especially significant step forward, under the provisions of the amended Act any provision, criterion, condition or practice that is in connection with the procedure prior to the employment shall also be deemed employment-related. Employers shall provide the opportunity to employees for advancement and promotion without discrimination, solely on the basis of professional skills, experience and performance, and of circumstances deemed substantive with regard to the position in question. In the event of any dispute in connection with the employer's actions, the employer shall be required to attest that this action did not violate the provisions on the prohibition of discrimination. Any consequences of discrimination shall be properly remedied. The legal remedy afforded to an employee who has been discriminated against shall not result in any violation of or harm to the rights of another worker.

43. Section 5 (6) of the amended Labour Code contains the principle of affirmative action, guaranteeing actual social equality. It stipulates that in respect of a specific group of employees, employment-related regulations may stipulate the obligation of priority under identical conditions in connection with employment.

44. Section 3 of Act I of 1996 on Radio and Television Broadcasting stipulates that the broadcaster shall respect the constitutional order of the Republic of Hungary; its activity may not violate human rights and may not incite hatred against individuals, sexes, peoples, nations,

national, ethnic, linguistic and other minorities, and Church or religious groups. Broadcasting may not aim, openly or tacitly, at insulting or excluding any minority or majority, or at presenting them or discriminating against them on the basis of racial considerations.

45. According to section 26 of the same Act, "it is the obligation of public service broadcasters to foster the culture and mother tongue of the national and ethnic minorities living in Hungary, and to provide information in their mother tongues on a regular basis".

46. The implementation of the Convention in Hungary is facilitated by the legal guarantees incorporated in the criminal justice system, both in principles and in practice. Act I of 1973 on the Code on Criminal Procedure sets forth provisions according to which no one shall suffer any legal prejudice because of his lack of knowledge of the Hungarian language; the right to the use of the mother tongue, both verbally and in writing, is guaranteed. The Hungarian authorities are required by law to appoint a defence counsel for defendants who do not speak Hungarian, and the appointed defence counsel will be responsible for safeguarding the defendant's constitutional right to defence.

47. The changes and amendments to the Hungarian Criminal Code and in the Code on Criminal Procedure have necessitated the modernization of certain provisions of the Rules on the Enforcement of Punishment (Law Decree No. 11 of 1997) even before the Rules on the Administration of Punishment and Penitentiary Measures can be comprehensively overhauled. Act XXXII of 1993 amending the Rules on the Enforcement of Punishment (henceforth: Bv.tvr.) - to a great extent with a new approach - already took into account the recommendations of the Council of Europe's Committee of Ministers on the rules and regulations concerning the implementation of punishment. It also took into consideration the relevant United Nations rules and the international conventions promoting the prohibition of discrimination.

48. A new component of legal guarantee was introduced by the above Act, which defined the legal status of convicts in accordance with international practice and criteria. According to paragraph (3) of section 2 of the Rules on the Enforcement of Punishment, no convict can be subject to discrimination on the grounds of his national or ethnic origin, religion, political conviction, social group, gender or wealth.

49. During the reporting period, convicts have been provided with broader rights to legal remedy: there is a more general access to legal remedies through judicial channels and the judiciary has also been granted extensive powers to address questions relating to the special legal conditions of the penitentiary system.

50. It has become a generally accepted principle that the penitentiary system and all related activities must be conducted with full respect for fundamental human rights; the administration of punishment must be limited to the deprivation of liberty without any related coercion or suffering.

51. The new regulation also facilitates foreign convicts exercising their rights in the course of criminal proceedings and during the implementation of punishment in the Hungarian penitentiary system. According to the Rules on the Enforcement of Punishment, foreign convicts have the right to receive information in their own language, or in any other language known to them, on

the relevant legal provisions stipulating their rights and obligations. Foreign convicts must not suffer any legal disadvantage because of their lack of knowledge of the Hungarian language. Convicts also have the right to use their mother tongue while serving their prison term.

52. In line with the modernization of the law decree concerning the Rules on the Enforcement of Punishment, related implementing rules and regulations have also been adopted.

53. Most of the ministerial decrees issued on the legal status of convicts serving their sentence in various penitentiary institutions refer to the requirement of lawful treatment and the prohibition of discrimination.

54. Legal provisions regulating the enforcement of punishment for non-Hungarian citizens stipulate that the penitentiary institution is obliged by law to ensure that foreign inmates are allowed to receive information in their own language or in any other language known to them about the relevant legal provisions stipulating their rights and obligations.

55. In receiving a non-Hungarian convict in a penitentiary institution, the authorities must without any delay inform the diplomatic or consular representatives competent in the case of the foreign national concerned. He/she must be informed in a language known to him/her if his/her prison term is transferable under international agreements. When selecting his/her quarters care must be taken to make sure that his/her fellow-inmates speak or know the language used by him/her.

56. All interpreting or translation expenses incurred with respect to the rights and obligations of a foreign convict while serving a sentence in a Hungarian penitentiary institution must be borne by the competent Hungarian authority.

57. Subparagraph 6 (3) of Ministry of Justice Decree No. 5/1998 (6 March) on the health care of convicts includes provisions offering human rights guarantees in cases when a convict is received with external signs of injury, or the convict himself claims to have suffered such injury.

58. Act XXXIV of 1994 on the Police also states, in line with international principles, the prohibition of torture, interrogation under duress, and cruel, inhuman or degrading treatment; it provides for statutory regulations that offer legal guarantees concerning the use of coercive measures. According to these legal provisions, Hungarian police are prohibited from using any such treatment and, should they receive orders contrary to these provisions from their superior, they are obliged by law to refuse the orders. Moreover, if they observe such conduct, they are expected to prevent it by taking appropriate measures, to initiate legal proceedings or to launch an investigation.

59. Paragraph 1 (2) and (3) of Ministry of Interior Decree No. 19/1995 (13 December) on Police Detention also contains human rights guarantees which establish that persons held in custody in police detention cells must be treated with full respect for human dignity. The police are prohibited by law from subjecting such persons to torture or cruel, inhuman or degrading treatment. Persons in custody cannot be used for medical experiments or scientific examinations or tests even if the consent of the persons is given.

60. When applying the regulations concerning police detention, detainees cannot be discriminated against on the basis of race, colour, sex, religion, political or other opinion, national or social affiliation, descent, or social or any other position.

61. Coercive measures that members of the penitentiary system are permitted to use are regulated on a statutory level by Act CVII of 1995 on the Penitentiary System, thus satisfying the requirements of the rule of law. The same Act also offers legal guarantees for ascertaining whether the use of coercive measures was justifiable. In harmony with other statutes, the Act provides that the person who is the subject of such coercive measures has the right to lodge a complaint with the authorities competent in that matter (police, prosecutor's office, court) or to use other forms of legal remedy. In line with Act LXIII of 1993 on the Protection of Personal Data and Accessibility of Public Data, the aforementioned Act also specifies the types of convicts' data and related documents which the authorities are permitted to register, and regulates issues such as the classification of the use of such data, data protection and data provision, as well as registration deadlines. Priority is given to systematic supervision to prevent discrimination, torture and all other prohibited acts.

62. In 1989, with a special view to providing legal guarantees required by the rule of law, the Republic of Hungary incorporated into the provisions of the Constitution a new principle, according to which the legal supervision and control of the penitentiary system is conducted by the prosecutor's office. This principle was later consolidated by section 11 of Act LIX of 1997 amending the Constitution of the Republic of Hungary.

63. The above measures are also in harmony with the recommendations of the United Nations and the Council of Europe. The resolutions passed at the eleventh session of the United Nations Commission on Crime Prevention and Criminal Justice held in Vienna in 1990 called for prosecutors' offices to play an increasingly active role in implementing judicial decisions, as well as the supervision and control thereof to monitor any abuses of power and severe violations of human rights.

64. The supervision and control of Hungary's punishment administration system - a system which also extends to punishments other than the deprivation of liberty - are appropriately regulated, whereas systematic supervision and control conducted in the penitentiary institutions by the supervisory prosecutors substantially contribute to the safeguarding of human rights. Legal supervision and control of the system of the administration of punishment are conducted on the basis of the following powers and entitlements: regular supervision and control; the right to immediate legal measures; the right to make motions to law enforcement agencies, judicial authorities and administrative organs of the justice system. Legal supervision and control by the prosecutors' offices are designed to function under the above legal entitlements as a whole, and they basically differ from those of the judicial system, of the ombudsman, and from internal and international or social supervision and control.

65. Legal supervision and control are, as a matter of fact, conducted by prosecutors' offices regularly, continuously and throughout the country's territory. The role of supervisory

prosecutors in the Hungarian penitentiary system has undergone comprehensive changes as a result of recent legislative acts; specifically, higher expectations have been formulated and more specific tasks have been assigned to them by a number of new statutory laws and ministerial decrees.

66. In view of this new statutory environment, Hungarian prosecutors' offices also perform the very important task of supervising and controlling the lawful treatment of convicts. Supervisory prosecutors conduct regular legal monitoring of confinement in each and every penitentiary institution. They conduct hearings with the convicts and other persons there. If a prison inmate has a complaint or a statement to make against a prison guard or a law enforcement agent, the facts of his statement are recorded in a protocol and appropriate measures are taken to remedy the legal prejudice and to restore legality. At least twice a month the prison is revisited, the treatment of the convicts and especially the use of coercive measures are investigated from the point of view of legality, and the system of rights and obligations is monitored. If, in the course of their investigation, the supervisory prosecutors detect or observe any violation of the law - for instance, they discover unlawful treatment - they take measures without delay.

67. One of the most important guarantees that can safeguard the legality of treatment of persons deprived of their liberty is the right to equal treatment. The legality of treatment, in the strict sense of the term, must incorporate the prohibition of all forms of discrimination against the convicts, the use of an acceptable tone with the convicts and full respect for their human dignity and self-esteem.

68. The above guarantees will not function unless directors of penitentiary institutions take a consistent and determined stand on the rejection of all forms of ill-treatment, assault or unlawful behaviour against convicts. One of the preconditions for the lawful treatment of convicts is their obligation to comply fully with the rules and regulations of the penitentiary system, i.e. convicts are not to receive benefits other than those provided for in the penitentiary rules and there must be no unlawful contacts and dealings between the guards and convicts.

69. In accordance with official circular No. 2/1995 issued by the Chief Prosecutor's Office, the CPO has conducted a survey in each and every year on the legality of treatment of convicts since 1995, following the first visit of CPT of the Council of Europe to Hungary. Based on the conclusions of the second (1999) visit of the Committee, a new circular was issued with the specific aim of prevention, setting forth new obligations for supervision, investigation and reporting. This creates an enhanced guarantee designed to prevent and eliminate any ill-treatment by members of the law enforcement agencies and the penitentiary institutions.

70. The conclusions of the nationwide investigations that prosecutors have conducted since 1995 indicate that - except for a few isolated cases - the treatment of convicts in general satisfies the expectations formulated in international conventions and complies with the criteria set by the relevant Hungarian legal provisions in force.

71. In one specific case, the relative of a defendant held in preliminary custody in a penitentiary institution appealed to the Parliamentary Commissioner for National and Ethnic Minority Rights claiming that the person in custody had been subjected to discrimination and that the authorities had applied unreasonably severe detention measures against him in the penitentiary institution because of his Roma origin.

72. In one of the district police stations of Budapest a detention facility guard received a verbal reprimand as a result of a disciplinary action because he had addressed a Roma detainee in derogatory terms in connection with his ethnic origin.

73. In another penitentiary institution a group of convicts complained that they had been called Gypsies in derisive terms, but they failed to name the accused guards of the penitentiary institution. Another convict in the same prison complained that his request for kosher food had been turned down and his right to observe the dietary laws of his religion violated.

VI. ARTICLE 6 OF THE CONVENTION

74. As to the Code on Criminal Procedure (henceforth: Be.) the previous report gave details about the fundamental principles governing criminal proceedings (ex officio procedure, right to the use of the mother tongue, right to legal remedies) which have not changed since the submission of that report. In connection with the right to legal remedies, however, reference must be made to section 57 of the Constitution, as amended, subsection 5 of which provides that with effect from 30 July 1997, "In the Republic of Hungary, everyone shall have the right to seek legal remedy against a decision of a court, public administration or other authority, which has infringed his/her rights or lawful interests. In the interest of adjudicating legal disputes within a reasonable length of time, proportionately, the right to legal remedies shall not be restricted unless by an Act passed by the vote of two thirds of the attending members of Parliament." Thus, as a result of the amendment the right to legal remedies became a constitutional right.

75. As to the system of legal remedies ensured under Be. - appeal, revision, reopening of the case - no conceptual changes have been effected since the submission of the previous report. However, as a result of amendments, with effect from 1 March 2000 new reasons were added as bases for the reopening of a case, which may affect article 14 of the Convention insofar as Hungary has made the statement mentioned under this article. According to section 276, subsections (5) and (6):

> "(a) a final judgement passed by international human rights organs in proceedings instituted upon the complaint of a person under Hungarian jurisdiction, if these organs find that an international legal obligation has been breached through the violation of law, provided that the Hungarian State has undertaken to abide by the final judgement of that international human rights organ in international treaty,
>
> "(b) a unity of law resolution passed by the Supreme Court
>
> shall be regarded as new evidence falling within the meaning of section 276, subsection (1), point (a)."

76. The previous report indicated that as a result of a Constitutional Court decision the institution of "protest on legal ground" had ceased to function as a legal remedy with effect from 31 December 1992. Subsequent legal practice, however, demonstrated that serious breaches of law occasionally occurred which could not be remedied within the system of remedies of the Be. as in force at that time. Therefore, with effect from 1 March 2000 Act CX of 1999 introduced a new legal remedy into Be. called "remedy in the interest of legality". Section 291/B provides:

> "A remedy in the interest of legality against a final court decision shall lie with the defendant if:
>
> "(a) the guilt of the defendant has been established by violating the rules of substantive criminal law, or
>
> "(b) the final court decision violates the prohibition of the aggravation of punishment [section 234, subsection (1); section 241, section 354; subsection (3)], provided that no other remedy is available against the final decision."

77. The Chief Prosecutor shall submit remedy in the interest of legality. Be. defines the scope of persons entitled to initiate proceedings and specifies those who are to be informed by the court and details the rules of procedure.

78. Ministry of Justice Decree No. 6/1996 (12 July) on the Rules and Regulations concerning Imprisonment and Preliminary Custody stipulates that victims' rights may be defended either in person, by a legal counsel, by a statutory agent or by proxy. The Decree also provides a full description of the legal provisions which offer guarantees for convicts to seek legal remedies. In addition to the standard legal remedies already available, inmates can also directly refer their case to the prosecutor who is authorized to exercise legal supervision and control over the penitentiary institution; they can request a hearing by the prosecutor; if they claim that their fundamental freedoms, which they are entitled to enjoy while serving a prison sentence, are being violated they can appeal to the Parliamentary Commissioner (Ombudsman) for Civil Rights, as well as to the Parliamentary Commissioner for National and Ethnic Minority Rights; in case of a legal prejudice pertaining to the handling of their personal data or their right to have access to public data, they may also refer their cases to the Parliamentary Commissioner for Data Protection and Freedom of Information.

79. The right of convicts to appeal to international forums specified under separate legal provisions is also provided for by the law.

The work of the Parliamentary Commissioner for National and Ethnic Minority Rights

80. When examining the prohibition of discrimination it is worth highlighting the activities of the Parliamentary Commissioner for National and Ethnic Minority Rights. The Ombudsman dealing with the rights of minorities, who is independent and responsible to the National Assembly, is a feature of Hungary. One of the main tasks of the Commissioner is to uncover and, when possible, to remedy ethnic discrimination. The Commissioner has so far stated in all his reports that the State, local governments and its institutions do not knowingly follow a

discriminatory policy. He was of the opinion, however, that discrimination is part of everyday life, causing an especially grave problem for the Roma community, its groups and members (60 per cent of the complaints filed in 2000 originated from Roma petitioners).

Two proceedings conducted by the Parliamentary Commissioner for National and Ethnic Minority Rights

81. Hungarian Television Channel M1 broadcast a report about moving Roma families from Zámoly to Csór. The reporter made the following statements in the report: "Since the Roma from Zámoly have moved to the village, the number of burglaries has risen significantly according to local people ... Villagers were taken aback by the fact that Roma had flooded the village. The last straw was when six houses were broken into yesterday and the day before yesterday in the village." The mayor of the village stated afterwards that the Roma "have no place in this country".

82. The Commissioner initiated the proceedings of the Complaint Committee of the National Board of Radio and Television (hereinafter referred to as ORTT). As a result of the proceedings the Board concluded that Hungarian Television had violated in the contested broadcast of Hét (The Week) provisions contained in section 3 (2) and (3) of Act I of 1996 on Television and Radio, broadcasting programmes that contained allegations liable to incite hatred against an ethnic minority group. According to information given by the public prosecutor's office to the Commissioner, there was not even a hint of suspicion about any of the Roma who moved to Csór committing acts of burglary. Those making such statements committed slander and defamation as well, although the offended parties did not file the private complaint necessary for initiating criminal proceedings.

83. In another case a complaint was filed with the Parliamentary Commissioner for National and Ethnic Minority Rights concerning an article published in Kőbányai Hírlap which stated, "The elder of the Roma attackers pulled the man with the case from his seat and pushed him against the nearby door, while hitting him several times in the stomach. The younger took out a knife ...". The Commissioner drew the attention of the competent local government to the fact that in reports of this kind it is not necessary to indicate the ethnic origin of the persons involved. The representatives of the local government held a meeting afterwards to review the case and in the name of that body the mayor has promised to avoid further libels.

The question of a comprehensive anti-discrimination law

84. The Office of the Parliamentary Commissioner for National and Ethnic Minority Rights has prepared a draft law on the elimination of racism and xenophobia and on the safeguarding of equal treatment. The future act would encompass all proceedings, actions, measures (negligence) and treatment by the State authorities, local governments, and social and economic organizations concerning all natural persons, and groups definable by race, colour, or national or ethnic origin who are in the territory of the Republic of Hungary.

85. The draft deals prominently with discrimination exercised by the executive branch and the public services. The document contains the right to equal treatment, and also defines direct and indirect discrimination and segregation. It cites specific areas of ethnic discrimination and

provides remedies for victims. The specific areas cited in the draft act are discrimination in employment, education, the social sphere, health care, public administration and the public service.

The Committee on Anti-discrimination

86. The Committee on Anti-discrimination has been established upon the initiative of the Minister of Justice. It consists of the representatives of several ministries, as well as of the Office of the National and Ethnic Minorities, the Office of the Parliamentary Commissioner for Civil Rights and the Human Rights Committee of the National Assembly. The Committee started its work in the first half of 2001. The various ministries detailed the provisions countering discrimination in their respective fields of competence. As a second phase of the work, experts invited by the Committee prepared working papers on the necessity of enacting a comprehensive law on discrimination. The working papers have already been submitted and their evaluation is now under way.

VII. ARTICLE 7 OF THE CONVENTION

87. According to the decision on 16 March 2001 of the National Board of Radio and Television (ORTT), the winner of a tender for 88.8 Mhz, a non-profit frequency band, is Radio C, a Roma radio.

88. The Hungarian Constitution ensures for everyone the rights to education and culture; therefore, these rights are secured for persons detained in penitentiary institutions as well.

89. The fundamental principles of education and training are specified under Act LXVIII of 1999 on Public Education and Act LXXVI of 1993 on Vocational Training.

90. The educational and training programmes organized within the penitentiary institutions aim to reduce the cultural and educational differences between the inmates and to increase the level of their qualification with a view to improving their position in the labour market when released and bettering their chances of reintegration into society.

91. Training programmes are adjusted to the specific forms of penitentiary institutions (whether housing inmates in detention on remand or inmates serving their sentences of imprisonment), the duration of the detention and the health conditions of the inmate, including psychological and other statuses as well.

92. Participation of the inmates in educational-vocational and rehabilitative programmes is voluntary. Section 2, subsection (3), of Decree No. 11 of 1979 on the execution of sentences and measures (henceforth: Bv. tvr.) provides that no one shall be discriminated against on the grounds of sex or national, racial or social origin when forming groups within the penitentiary institutions. Accordingly, no instances of discrimination have been reported from the institutions.

93. Penitentiary institutions do not register inmates as belonging to a minority group; they do, however, keep contact with several organizations in the interest of making known and maintaining minority, especially Romani, cultural values (e.g. penitentiary institutions keep contact with the local Romani organizations; the National Headquarters of Law Enforcement in Penitentiary Institutions cooperates with the Romano Kher Gipsy House of the municipality of Budapest).

94. Romani culture and folk crafts are popularized by programmes organized within the framework of Romani and community colleges in several of the penitentiary institutions (e.g. in Sátoraljaújhely, Baracska, and in the institutions of Jász-Nagykun-Szolnok and Fejér Counties).

95. These courses can be attended by any interested inmate.

96. The training project "Integrated farm-bailiff I-II-III" - financed by PHARE 99 - was launched on 19 June 2001 in the National Penitentiary Institution of Nagyfa with the participation of 60 inmates, a number of them belonging to the Roma minority.

97. The following forms of education and training are available in the penitentiary institutions:

(a) Education within the school system: primary school; secondary school; vocational secondary school; school training skilled workers;

(b) Education outside the school system: offered by the labour market; in community colleges;

(c) Forms of self-education: as private pupils; special remedial classes;

(d) Hobby groups and training.

98. Education and vocational training are organized within the framework of adult education, primarily in evening and correspondence courses.

99. In the penitentiary institutions many inmates attend the elementary education courses which thus play an important role in eliminating illiteracy or functional illiteracy among juveniles, young adults and adults. Since a number of the inmates enrolling in the upper classes prove to be functionally illiterate, they are ensured an opportunity to attend the lower classes simultaneously in order to recapitulate the body of knowledge offered by those classes.

100. In penitentiary institutions housing primarily inmates in detention on remand (so-called "county-houses"), intensive training programmes lasting from one to six months can be organized.

101. In recent years elementary school education has been organized in four further institutions (Nagyfa, Márianosztra, Szeged, Vác). In many of the other institutions so-called labour market training courses have been launched, financed either from budgetary or voluntary sources.

102. Therapeutic programmes (drug prevention, education for health) and personality development programmes have also been launched in increasing numbers in recent years. These programmes have been financed mostly by the British Embassy and the Ministry of Economy.

103. Each institution maintains a library available to all the inmates. In the period under review, the annual budget of the libraries has significantly been increased. As a result, books, textbooks, encyclopaedias and statute books are available in these libraries. Recently, interest in language, handicraft and popular science books has significantly increased.

104. The field of law enforcement regulation and practice is likewise governed by the endeavour to fully ensure the enforcement of the basic aims and fundamental principles enshrined under the International Convention.

List of annexes

1. Government Resolution No. 1047/1999 (V.5) about medium-term measures to improve the living standards and social position of the Roma population

2. Measures taken by the State to promote the social integration of Roma living in Hungary (Budapest, 2000)

3. Summary of measures taken by the Government affecting the Roma minority in 1998-2000

4. Act XX of 1949 on the Constitution of the Republic of Hungary

5. Summary of Decision No. 45/2000 (XII.8) of the Constitutional Court

6. Act IV of 1978 on the Criminal Code

7. Act I of 1996 on Radio and Television Broadcasting

8. Act XXII of 1992 on the Labour Code